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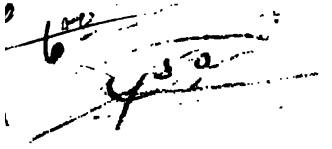

Schuylkill permanent bridge Comp

MEMORIAL

OF THE

President, Directors and Company

FOR ERECTING A

PERMANENT BRIDGE

OVER THE

RIVER SCHUYLKILL

AT OR NEAR THE

CITY OF PHILADELPHIA,

REMONSTRATING AGAINST CERTAIN ALTERATIONS PRAYED FOR BY

The West Philadelphia Canal Company

IN AN ACT ENTITLED

AN ACT TO AUTHORISE THE GOVERNOR TO INCORPORATE A COMPANY TO MAKE A CANAL ROUND THE WESTERN ABUTMENT OF THE PERMANENT BRIDGE OVER THE RIVER SCHUYLKILL AT THE CITY OF PHILADELPHIA, PASSED THE 4TH APRIL, 1831.

HARRISBURG:
PRINTED BY HENRY WELSH.

1833.

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MEMORIAL, &c.

To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

The memorial of "The President, Directors, and Company, for erecting a Permanent Bridge over the river Schuylkill, at or near the city of Philadelphia," Respectfully sheweth:

That they have learned that "the West Philadelphia Canal Company" have presented a memorial to your honorable bodies, praying for certain alterations in an act, entitled "An act to authorise the Governor to incorporate a company to make a canal navigation round the western abutment of the Permanent Bridge, over the river Schuylkill, at the city of Philadelphia," passed the 4th April, 1831.

These alterations being of vital importance to your memorialists, and to the public at large, and more particularly bearing upon the prosperity of the city of Philadelphia, they beg leave respectfully to *remonstrate most earnestly* against their being granted, and to submit to your honorable bodies, their reasons for so doing.

The only direct access from the large country west of the Schuylkill, to the city of Philadelphia, is by the Permanent Bridge, at Market street, a structure erected at a very great expense, and the completion of which was declared by the Legislature in 1798, "to be of great public utility, as well for the immediate benefit of the said city, as for the general interest of the state, which derives most essential and solid advantages from the commerce and prosperity of its capital."

Any interruption, therefore, to its passage, is *injurious to the community at large*, and destructive of the very purposes for which it was built, and which induced public spirited individuals to embark in it, at great hazard, a portion of their private fortunes.

So deeply impressed was the Legislature of 1831, with the absolute necessity of guarding the western access to Philadelphia against every possible danger, that *all the provisions which are now complained of, by the West Philadelphia Canal Company,*

were in the bill reported to the House, which finally became a law, with some few unimportant alterations.

Under this law, the present company was organized, and the amount now subscribed was obtained, *with a full knowledge of these objectionable provisions:* And yet, after a lapse of nearly two years, and before any active measures have been taken, even to *commence* this work, the Legislature is now asked to repeal those portions of the charter which form almost the only security the public have against a permanent, and, perhaps, irretrievable injury to this necessary highway to the metropolis of the state.

By the positive provision of the seventeenth section of the act of the 4th April, 1831, The West Philadelphia Canal Company cannot "engage directly or indirectly in any banking, monied, commercial, or manufacturing concern, or in the transportation or storage of any merchandize, lumber, coal, grain, flour, or other articles; *nor shall they erect, hold or own any other lands, buildings, wharves or docks, than such as are necessary for their business as a Canal Company.*" By the second section, the said company are capable of "purchasing, taking, or holding to them, their successors and assigns, in fee or for any less estate, such lands, tenements, hereditaments and estate, real and personal, as shall be necessary to them in the prosecution of their business as a Canal Company;" and by the tenth section, the tolls cannot exceed *six* per cent.

From these provisions, and the whole spirit of the act itself, it is evident that the Legislature did not intend to do more than to allow a canal simply to be made round the western abutment of the Permanent Bridge, so as to allow coasting vessels to pass through it to the wharves north of that structure, and to repass again. In fact, to place the wharf property on both sides of the bridge, upon an equality as nearly as possible.

But it was not their intention to allow this company to have buildings or store-houses on the bank of the canal, nor did they in any manner contemplate that it was to be used, in any other manner, than for a mere conduit or passage.

With these remarks, which they conceive to be a complete answer to the general complaint made by the Canal Company, "of great and insuperable difficulties being thrown in their way by some of the provisions of their charter," your memorialists will proceed to a brief examination of what are called the objectionable clauses. The two first are in the twenty-third section, and contain the strongest evidence that the Legislature meant it to be a mere canal, and not a basin, or dock, or harbor, for boats, and that it was so understood and accepted by the applicants for the charter.

The first clause is, "That no boat, vessel, or other craft, shall be permitted to pass through the said canal, when there are any horses, carriages or other vehicles, passing to or from the said Permanent Bridge, within sixty feet of the said bridges so to be erected by the said Canal Company." The canal is necessarily a short one, and the upper and lower mouths not much removed from the two bridges to be built by the Canal Company. The object of this clause, was to prevent these numerous accidents which would inevitably occur, by frightening horses that were passing to or from the Permanent Bridge, by allowing vessels to enter the canal and pass through, when they were actually using the entrance to the bridge. This view is sustained by the twenty-sixth section, which has some very important regulations on this branch of the subject. The duty is devolved on the Canal Company to see this provision enforced, and for a neglect so to do, they are liable to a fine of $150, which your memorialists consider very light, when compared with the injury individuals crossing the bridge may sustain, *even to the loss of life*, if a compliance with it was not rigidly exacted.

The intention is plain, and the object being *the protection of the community*, your memorialists trust that your honourable bodies will not repeal or alter this valuable provision. The second clause is in the same section, and is as follows: "Nor shall any boat, vessel, or other craft, be allowed to lay in the said canal, nor after dusk, nor before day-light, be permitted to pass through the said canal.

The object of this clause is the same as the foregoing, and is as essential for the protection and safeguard of the citizens using the bridge.

Your memorialists, however, do not see what interest the Canal Company have, in asking for the repeal of any part of this section. They can only dig a canal, and have no power whatever to build store-houses, or to make wharves, docks, or landings, on the canal, for the purposes of trade. It must be, then, that it is the private interest of some of the stockholders, to have these clauses repealed, in order that they may do these acts, individually, which are entirely prohibited to them in their corporate capacity. If this be the case, it cannot certainly be the wish of your honourable bodies to accommodate private individuals, not known to you, nor before you as petitioners, at the expense of the public.

But why should a vessel be allowed to lay in the canal? Is it necessary to open the wharf property above the bridge to the coasting trade? And will it not increase the danger of real

impediment to the use of the bridge, which was built and used long before this plan of a canal was ever thought of?

To the arguments addressed to the Bridge Company, they might content themselves with saying that the Canal Company cannot, by their charter, reap any benefits from the repeal of this section; but they feel inclined to meet the applicants on their own ground.

On the south of the bridge, the Bridge Company hold lots on both sides of the river, 129 feet in width, and all vessels touching at, or using their wharves, are entirely within their control; those using the canal, they have no hold over, except by the provisions of this act. On the north, on both sides of the river, the city are the owners of the property adjoining the bridge, and your memorialists feel confident that they will never, knowingly, do any act which will, in the slightest manner, injure the Permanent Bridge, or in any way impede a free and constant access to it.

Your memorialists, however, do most sincerely deprecate the erection of ware-houses, by any persons, on the banks of this canal; for they are well aware, that such buildings would tend materially to increase the danger of destruction to the bridge, not only by fire, but from as serious an enemy—a flood.

The ground on both sides of the river, adjacent to the bridge, was originally low, and was considered as a great protection to the superstructure in case of flood, by affording additional means of conveying off the surplus water.

By the regulation of Market street, the eastern approach to the bridge was raised to the height of upwards of thirteen feet above high tide, and thus this part of the drain was stopped up. By the annexed certificates, it will be seen that the ground west of the western abutment, is now *not one foot above the level of high tide, and that in the great flood of* 1822, *the water and ice passed over it, and thus saved the bridge from destruction.*

If, however, warehouses are built there, and the ground on the sides of the canal occupied by such permanent obstructions, it is evident that the water, in time of flood, must pass through the water-way of the bridge alone; and if another flood, like that of 1822, occurred again, the superstructure must inevitably be carried away, and all access to the city entirely cut off.

Your memorialists trust that, for the private benefit of persons who are not before your honourable bodies as petitioners, the Legislature will not incur the risk of destroying this valuable public work.

3d. The third objection is to the twenty-seventh section, which your memorialists consider as absolutely essential for the protec-

tion of the community. It proposes a real tangible surety, worth $10,000, to guard the public against all loss or injury, by the abandonment or non-completion of the work. It is proposed to substitute the real estate of a company, which would, in fact, be dissolved when the lien was to be enforced, and which, by the terms of the charter, would consist only in an unfinished or abandoned ditch.

The Canal Company must be aware that, by the law of Pennsylvania, a bond and judgment would not be of the slightest avail, for a canal or turnpike road cannot be sold by any process that can be issued upon them; and as to a mortgage of it, it is not certain that it would be more available.

There is, however, a plain and easy answer furnished by the memorial of the Canal Company. They calculate the whole loss to be incurred, in case of non-completion or abandonment, to be but $500; and if this be the case, *cannot they induce one or more of their stockholders, some of whom are amongst the wealthiest men in the state, to enter into this bond, by mortgaging to them what they now offer to the public*, to secure them against any loss that may be sustained, in consequence of the surety required by the provisions of this section?

If the work is seriously meant to be done, this section can be no impediment. *If it is not*, then those who wish this improvement, ought to pay the loss, and not leave it to be borne by the Bridge Company, or the public, who must inevitably suffer by the non-completion or abandonment of the work, after it is once commenced.

4th. There are general complaints of the amounts of the penalties given by the law, not for the use of the company only, but in fact to protect the community, and, therefore, *for the public benefit.*

The penalties incurred can only be levied on the corporate property of the company, and that would not be, indeed, any very great security.

Their object, however, is *to prevent*, and *not to punish*, and as the injury will be sustained by the public, in case this access to the city is interrupted or destroyed, they ought to be high enough to secure a prompt and ready obedience to all the provisions of the law.

The damages sustained by the Bridge Company are one thing, and these they are secured the recovery of by the existing laws; but still they are to be sought after through the uncertain medium of a suit for damages, to be estimated by a jury, except in the cases mentioned in the twenty-second section.

The penalty in the twenty-third section we have already con-

sidered. That in the twenty-first section is most moderate indeed; for if any part of the provisions of that section are neglected, the injury to the public would be incalculable.

Suppose the bridges, or the railings thereof, or the railings on each side of the canal, or the gates opposite the said bridges, are out of repair, ought not the company to be fined in such a manner, as effectually to prevent a repetition of so great an offence as endangering the lives and property of individuals going to, and from the metropolis of the state?

Suppose that both bridges are up, and all access thus barred to and from the city—could any penalty be too excessive?

To the twenty-second section, the objection of the Canal Company does not apply; and those imposed on the gate-keepers and owners, or skippers of boats, by the twenty-fifth and twenty-sixth sections, are so moderate as not to need any remark whatever.

The twentieth section is intended to secure a free access, at all times, to the bridge, during the prosecution of the work, and the power to demand the penalty, which is very low, considering the evil to be prevented, ceases with the construction of the canal.

The admission by the Canal Company, that "to raise the *first* bridge, to propel the vessel through it, and then close this bridge before opening the second, will *require about fifteen minutes*," shows how exceedingly cautious the Legislature should be in altering a single provision calculated to secure to the citizens an uninterrupted and safe passage over the Market-street Bridge, at all times and seasons.

Your memorialists would also state, that when the first application was made, in 1830, to the Legislature for a charter for this Canal Company, they were consulted by the applicants as to their views, and that a report, [a copy of which is hereto annexed] stating them briefly, was prepared, and a copy of it sent to Messrs. Nixon and Williams, the committee acting on behalf of the Canal Company.

In accordance with these views, sections *substantially*, nay, almost literally, the same as those now objected to, excepting the twenty-seventh section, were prepared and introduced into the bill, with the consent of the company. This bill not having passed either house that session, another bill containing these sections, with all these penalties inserted, and with the addition of the twenty-seventh section, was reported the next year, and passed with some slight alterations, and became the charter of the present Canal Company.

Your memorialists do, therefore, most respectfully represent,

that the present law was a subject of agreement, as to these provisions, with the Canal Company, who, if they had not agreed to these restrictions and limitations, would have met with the most strenuous opposition from the Bridge Company, and, as they firmly believe, never would have obtained an act of incorporation.

Nothing but an express application of the city of Philadelphia to your honorable bodies, will convince your memorialists that they desire the alterations prayed for by The West Philadelphia Canal Company; and they firmly trust that the Legislature will not consider them as favoring them, without a direct and positive expression of their opinion upon the specific relief asked for by the memorial of the company.

Your memorialists beg leave to annex to this memorial, the report of a former committee of councils on the subject of this canal, in order to show the views entertained and expressed by some of the highly respectable individuals then composing the councils of the city.

In conclusion, your memorialists do most respectfully, but earnestly, remonstrate against all and every the alterations prayed for by "The West Philadelphia Canal Company," as they do sincerely believe that they will not only prove injurious to the interests of the Bridge Company, but also to those of the city of Philadelphia, and of the state at large.

JOHN READ,
President of the Permanent Bridge Company.

Attest—GEO. RUNDLE,
Treasurer S. P. Bridge Company.

No. 1.

CERTIFICATES

Certificate of Mr John Conory, City Corder on the Schuylkill.

I have resided on the Schuylkill since the year 1814, and during the whole period of my residence there, there has been hardly a day, except, when prevented by sickness, that I have not been down on the river. I have witnessed a good many freshets of that river during that time, and was present at the great ice freshet of the 21st and 22d February, 1822. That the greatest height of that freshet was about 4 o'clock in the afternoon of the 21st, and I then noted its height on the north and south sides of the eastern abutment of the Permanent Bridge at Market street, and afterwards marked them on the

abutment. These marks I have shown this afternoon to Samuel Hains, Esq. the City Surveyor. That after 4 o'clock the river fell, and rose again at 12 o'clock the same night to about the same height. This I know from living in a house, at the time, near the river, and the water having risen to within an inch of the lower floor of it. I sat up all night to watch its progress. During the freshet, the water and ice ran round on the low ground west of the western abutment, and provented the access to the bridge for some time. The water and ice did not leave the low ground until about sun down on the 22d.

I am of opinion, that if the low ground on the west had been filled up at that time with an embankment, so as to prevent the water and ice from running round the western abutment, that such was the body of water and ice, and the rapidity with which it rose, that the present bridge might, in all probability, have been carried away.

JOHN CONORY.

March 6th, 1830.

City Surveyor's Certificate.

I do certify, that at the request of the Permanent Bridge Company, I went this day, and took the heights of the freshets of March, 1784, and February, 1822. The height of the freshet of 1784, which was many years before any Permanent Bridge was erected over the Schuylkill, as appears by a mark on the eastern abutment of the bridge, was 10 feet 8½ inches. Mr. John Conory, the City Corder on the Schuylkill, pointed out to me a mark on the north side of the eastern abutment of the bridge, as the height of the freshet of February, 1822. This I ascertained to be 10 feet, being only 8½ inches below that of 1784. Mr. Conory also showed me a mark on the south side of the same abutment, as showing the height of the freshet of February 1822, on that side of the abutment, and I ascertained that this mark was 4 feet 3 inches below the mark on the north side, showing a descent of the water of 4 feet 3 inches, in passing the width of the abutment, which is 42 feet.

I also levelled the ground west of the western abutment, and found that 65 feet west from the coping of the northern wing wall of the bridge, the ground was 11 inches, and at 127 feet 9 inches west, only 8 inches above high water mark.

SAMUEL HAINS, *City Surveyor.*

Philadelphia, March 6th, 1830.

Certificate of Mr. Frederick Erdmann.

I do certify, that at the request of the Permanent Bridge Company, I measured, on the 5th March, 1830, the several distances between the piers and abutments of the Schuylkill Permanent Bridge, at Market street. The following are the measurements: the wharf at the eastern abutment measures 54 feet 8 inches, from the masonry to the extremity of the wharf; and the wharf at the western abutment, in the same way, measures 22 feet 6 inches. The distance from the extremity of the wharf at the eastern abutment, to the eastern pier, at high water, is 92 feet 4½ inches, and between the two piers, is 190 feet 8 inches, and from the west side of the western pier to the extremity of the wharf at the western abutment, is 124 feet 10 inches, making the clear water way at high water, 407 feet, 10½ inches at the Permanent Bridge. The eastern pier, at high water mark, measures in thickness 23 feet 7 inches, and the western pier 23 feet 8 inches.

FREDERICK ERDMANN.

March 6th, 1830.

Extract from a memoir of the Permanent Bridge at Market street.

It appears by an extract from a statistical account of the bridge, communicated to the Philadelphia Agricultural Society in 1806, and published in the first volume of their Memoirs, that the low ground was always supposed to be a main security to it in times of freshet. In page 11, speaking of the various projects for crossing the river, the writer says,—"Some would have the river filled with a dam and causeway, after a bridge had been built on the flats of the fast land, and a channel cut through these flats. Some proposed *a low stone bridge, to be used only when the river was in its ordinary state; and when raised by floods, torrents should run over the bridge*: Thus intermitting its use, when it was most required. Some would have, with any bridge, arches, turned from hill to hill, *and thus occupy with impediments the low grounds*, which now afford additional passage to the overflow of the stream. The expense, too, would require the funds of a state, and never could have been accomplished by private advances, with any prospect of profit. *Any buildings or other obstructions placed on these flats, will confine and of course redouble the force of the current. They would cause the accumulation of the ice and damming of the stream; the most formidable foes the bridge has to contend with.*"

No. 2.

REPORT OF COMMITTEE OF BRIDGE COMPANY.

S. P. Bridge Office, November 11, 1829.

The report of the committee on the subject of the canal proposed to be located west of the bridge, being laid before the board, the same was unanimously adopted, and is as follows:

The committee, to whom was referred the application of the owners of property above the Permanent Bridge, in reference to a canal round the western end of the bridge, respectfully REPORT:

That they proceeded to the ground designated for the contemplated canal, accompanied by the engineer, Major Wilson, who gave to the committee a very full explanation of the plan, which he had prepared on paper, of the proposed improvement.

The committee learned with pleasure, the increasing prospects of the trade on the river between the two bridges, and the reasonable expectations entertained, that if a free navigation could be had above the Permanent Bridge, much of the coasting trade of the river might be looked for in that quarter. This consideration alone, induced the committee to entertain any view whatever favorable to the projected plan, or to recommend its acceptance under any terms that could be thought of. They can foresee no kind of benefit that the measure can hold out to the Bridge Company; on the contrary, they think they can see evils that may arise from it. At present, as the bridge stands, no interruption is nor can be interposed to the free passage of the bridge, nor ought any ever to occur, for, in proportion as such risks are likely to happen, in the same degree is the value of this description of property lessened. This general position is undeniable, and ought to be respected in all practicable cases. But it will not be possible to do so, should a navigable canal be located in the manner proposed, at the foot of the bridge; for however well the canal may be planned, and however well the plan may be executed, casualties may, and probably will happen, which may not be capable of an immediate remedy. In addition to this, a scene of active business will be brought to the western access of the bridge, which, from the hurry and bustle there, will make the avenue a place of noisy business, whereas, for the interest of the Bridge Company, it should be kept in a state of quiet, freed from all causes likely to incommode travellers. If the committee were governed by these and other obnoxious difficulties, they would at once recommend the rejection of the plan, as likely to interfere materially with the

interests of the Bridge Company. But they have taken a more extended view of the matter, and looked to its ulterior effect upon the property of those who are interested above the bridge, as well as its probable introduction of an active coasting trade, to the portion of city and county likely to be embraced in its benefits. From a desire to serve the views of those who are the advocates of the plan, as well as the public in general, the committee are willing to hazard much, and therefore recommend to the board to accede to the measure asked of them, upon the terms and conditions following, which are suggested by the committee as essential, in their opinion, to the security of the bridge, and the general interest of all concerned in it:

1st. That no part of the bridge property be taken for the proposed canal, or any of its works.

2d. That the eastern line of the canal shall cross the turnpike road, at a distance of not less than forty feet west of the western extremity of the parapet or wing wall of the bridge; nor shall any of the works, machinery or devices appertaining to the canal, approach nearer the Schuylkill Permanent Bridge, than the western line of the said forty feet.

3d. That during the construction of the canal, provision must be made that the passage to the Permanent Bridge be not interrupted, under an adequate penalty.

4th. That two bridges be erected and maintained in good repair across the canal, together with a safe and convenient way for foot passengers.

5th. That one of the said bridges shall always be kept down. This provision to be guarded by a suitable penalty.

6th. Should the passage across the canal, from accident or other causes, be interrupted, the bridge company to be indemnified for the loss or injury thereby incurred, in a sum per diem equal to the average receipts of toll, during the continuance of such interruption.

Resolved, That the Treasurer be requested to hand a copy of the foregoing report to Messrs. Nixon and Williams, acting in behalf of the Canal Company, with a request that when they have prepared the bill which they purpose to lay before the Legislature in reference to the canal, they will furnish the board with a copy of the same, for the purpose of their examination and approval, previous to its being forwarded to Harrisburg.

Extract from the minutes,

GEO. RUNDLE,

Treasurer S. P. Bridge Company.

No. 3.

Report of the Committee of the Select and Common Councils of the City of Philadelphia, respecting the proposed Canal, near the western abutment of the Permanent Bridge over the River Schuylkill.

In Select Council, February 10th, 1831.

Resolved, by the Select and Common Councils, That a joint committee of three members of each Council, be appointed, to inquire and report whether any interference or action, on the part of the Councils, is necessary, in relation to the contemplated formation of a canal, at or near the western abutment of the Permanent Bridge over the river Schuylkill; and that they be authorized to call a special meeting of Councils, should they deem it necessary.

Select Council appointed Messrs. Duane, Massey and Horn.

Common Council concurred, and appointed Messrs. Johnson, Wainright and Ryan.

Extract from the Minutes.

ARCHIBALD RANDALL,
Clerk of the Select Council.

—

REPORT.

The Committee of the Select and Common Councils of Philadelphia, which was appointed on the 10th instant, to inquire and report "whether any interference or action, on the part of Councils, is necessary, in relation to the contemplated formation of a canal at or near the western abutment of the Permanent Bridge over the river Schuylkill," respectfully report:

On the 25th of January last, a bill was read in the House of Representatives of Pennsylvania, entitled, "An act to authorize the Governor to incorporate a company to make a canal navigation round the western abutment of the Permanent Bridge over the river Schuylkill, at the city of Philadelphia."

On the 31st of the same month, one of the city representatives transmitted a copy of this bill to the presidents of the Select and Common Councils, who laid it before Councils at their next meeting, on the 10th instant, when your committee were appointed.

On the 15th instant, before any inquiry could be made or report presented, the bill above mentioned was passed by the House of Representatives.

Your committee regret that a decision was not deferred in the House of Representatives, if for no other reason, because whilst the bill was under its consideration, the discussion of its merits was unrestrained; but now that one branch of the legislature has decided, your committee feel a delicacy, which nothing but a decided sense of public duty on ther part could control.

As soon as your committee were appointed, they impartially sought for and obtained information, from those who seemed to be most anxious for the canal, we mean the owners of real estate north of Vine street, on the Schuylkill eastern front, and from the Permanent Bridge Company, who, if not actually opposed to the canal, suggested such doubts as to its character and tendency, as to excite serious apprehensions. Each of those parties frankly admitted, that its course was to a certain degree influenced by considerations of private interest; but, at the same time, each asserted, and your committee are not disposed to deny, that a proper regard for the public welfare was a moving motive.

Your committee expressed their conviction, that Councils were anxious to promote every public work, likely to improve the city and adjacent districts, and that they would not suffer themselves to be influenced by any partial considerations or private results: that few public works could be made, without in some way or other affecting the interests of individuals, favorably or unfavorably; and that the question, which your committee would respectfully submit to Councils, would be—whether the public benefits, likely to be derived from the proposed canal, would be of such a nature as to warrant the probable interruption and gradual disuse of the greatest highway in the United States?

This question your committee now respectfully submit. In considering it, they will, in the first place, observe, that judging from the bill before the Legislature, no question seems to have been raised, in framing it, as to the effects of the proposed canal upon the public interests at large; it would appear that two parties only were considered as vitally concerned, namely, the Permanent Bridge Company and the proposed canal company: those parties seem to have been negotiating, and have gone to the Legislature, rather to sanction their compromise than to deliberate upon a work of deep interest to the whole community. For it will be found, that, when investigation is directed to be made, as to the profitable effect of the canal, the inquiry is not to be, whether the public will suffer, but whether the safety and solidity of the bridge will be affected: and whenever penalties are

to be recovered, for impediments or interruptions, those penalties are to be had by the Bridge Company. On these characteristics of the bill, no comment is needful: it is sufficient to say that, in the opinion of your committee, the measure has not been submitted to the Legislature, in the way which its magnitude demanded. We do not inquire how many, or whether any, petitions were presented in favor of a work, which is stated to be so important; but, we beg leave to say that, in our opinion, the friends of the measure should have, in the first place, asked the Legislature to sanction a scientific and local inquiry and examination, as a preliminary step, in relation to such a work as does not exist, at least in the United States: and its friends should be able to point to any work elsewhere, of a similar description, introduced in a similar place, without public detriment: but, instead of any lights of this kind having been first shed upon a subject confessedly obscure, the Legislature were at once asked to authorise an irresponsible company to construct a work, as if its usefulness were obvious, and as if no fears of injury could arise.

When your committee say, that the bill before the Legislature contemplates the interruption of the greatest highway in the United States, they are sustained, as to the interruption, by the bill itself, and as to the nature of the highway, by the knowledge and observation of every one who is acquainted with Philadelphia and its vicinity.

The highway, which the bill proposes to sever, is not only in effect a street of the city of Philadelphia, which must speedily be the scene of great business—it is not merely the main link that connects Philadelphia with Pennsylvania—but it is the great medium of intercourse between the eastern states and the states west and south of Philadelphia.

Indeed, it is not possible, by mere description, to give an adequate conception of the vast importance of the highway west of the Permanent Bridge, comprehending the great Lancaster and Pittsburg turnpike road, the southern mail route, and various public avenues leading to the heart of Pennsylvania. Personal observation, at all seasons, and almost at all hours, satisfies your committee in designating this highway as the greatest in the United States, as one in which every part of Pennsylvania, and, perhaps, we might say of the United States, has an interest.

At present, this great highway, and the connecting bridge, are not only in a condition, such as the interest of the nation, state, and city, demand,—a condition perfectly safe and uninterrupted,—but they are honorable monuments of the wisdom

of Pennsylvania, and of the enterprise and public spirit of her citizens.

That any change, be it what it may, must render this great highway less safe and commodious than it at present is, must be admitted by all candid persons. Let it be remarked, then, that the bill before the Legislature, in its prominent features, contemplates various sorts of interruption and obstruction, as the consequences of the proposed canal: it, in effect, proclaims, that interruption will be the necessary consequence, and then makes provision by penalties to prevent, if possible, that unhappy result. This is itself sufficient to cast the mantle of doubt around the project, if not to raise the arm of hostility against it. The proposition is, to give to a corporation, with a capital of only 20,000 dollars, the power to cut asunder this great artery; and then, after it shall have been cut, if damage shall ensue, another corporation, the Bridge Company, are permitted to sue for penalties—penalties, which the officers of that company, in the presence of your committee, asserted, without contradiction on the part of the friends of the canal, also present, could not be recovered by legal process!

It is not, indeed, to be fancied, that the many penalties prescribed in this bill, were introduced without adequate motives: the House of Representatives must have had such fears and doubts, as your committee entertain: of what use, then, let us ask, are all the provisions about penalties, even if those penalties could be recovered:—the evil will have been brought into operation; some may enter into litigation, soon to be abandoned with disgust; others may persevere, until loss of time and money shall swell the measure of their wrongs; and, in the mean time, confidence will be diminishing, other routes will be sought for and carefully pointed out, trade will be diverted from its natural channel, and that which is now at once a protection and an ornament, will become a scene of vexation and decay.

It is represented to your committee, it is true, that a new section was introduced into the bill, before it was passed by the House of Representatives, reserving a power to the state, to abolish this canal if found pernicious to the public; but with deference, your committee must be allowed to say, that if, in any case, such legislation is correct, it cannot be so in relation to a measure of such magnitude as that under consideration. So fearful are the representatives of the people, that the project will be injurious—so seriously do they doubt, whether good or evil will result, that they deem it necessary to reserve the right to abate the work as a public nuisance! Now, your committee conceive, that no charter ought to be granted, whilst

such serious apprehensions exist; and that those apprehensions are well founded, your committee are convinced. The great interests of the public ought not to be hazarded, under an expectation that a nuisance may be removed: it will not be easy to abate such a nuisance, the stock may pass into the hands of widows and orphans, and many pungent reasons may be offered for claiming from the public treasury a remuneration for loss, which could not have been sustained under sound legislation; and, in the mean time, how could the public at large be redressed? When would confidence be restored, or trade and intercourse return?

Let it be observed, that the penalties and reservations referred to, are not the result of alarm excited by your committee: the bill, as solemnly passed by the House of Representatives, merely confirms apprehensions entertained, although not expressed; it in truth loudly calls, not only on the citizens of Philadelphia, but on all those in Pennsylvania and elsewhere, who have an interest in the great highway, to arouse and reflect upon the nature and tendency of the proposed work.

Your committee, then, cannot err, in saying, that a measure of so doubtful a character is not warranted, unless some object of deep concern, if not of absolute necessity, to the public, is to be attained, and can in no other way be effected. It will not be seriously contended, that an existing and universally useful work should be put in jeopardy, to promote some local or partial object.

What, then, is the complaint? and what is the end to be accomplished?

It is complained, that vessels with masts cannot ascend above the Permanent Bridge. In the first place, those who make this complaint, have no hesitation in asking the Legislature to impair a great public highway, guaranteed by time and by law to the public—they do not stop to inquire, whether real estate east and west of the bridge will or will not be affected; they overlook the consideration, that vast investments have been made upon the confidence of the permanency of this great highway; and yet those, who thus overlook the rights and interests of others, evince a keen sensibility about their own alleged rights.

If, indeed, there was now, for the first time, a proposition before the Legislature, to make a permanent bridge over the Schuylkill, and if those asking it showed utter indifference as to the rights and interests of the owners of property north of High street, those owners might with justice complain; for, it is indisputable, that an uninterrupted navigation, like an un-

terrupted road, is preferable to one that is in any way obstructed: on this point, there could be no difficulty, were the question pending; but the case is quite different; a bridge of vast public utility has existed for above a quarter of a century; complaint, if correct, could have been made thirty years ago, when it was proposed; the Legislature would not have sanctioned a public evil; as the connected bridge was sanctioned, it is fair to infer that no complaint was made, or navigation by vessels with masts insisted upon. Then, it is to be remarked, that few, if any of these who now complain of obstruction, owned their present property when the bridge was proposed or made: they purchased their lots with the obstructing bridge before their eyes; they bought them, subject to such incumbrance as the bridge created; and in paying for them, that incumbrance constituted a part of the price. It is not correct, therefore, to pretend, that any advantage was taken by the Legislature, or by individuals, or that the present owners were taken by surprise, or deprived of any right; nor is it fair to say, that the owners of property below the bridge have an incorrect advantage; if those below the bridge have any advantage beyond that of those above it, if their rents are higher, so was the price which they paid; and it is probable that the rent above and below will, ere long, if it does not now, bear a fair proportion to the respective prices paid by the owners.

Let us in the next place inquire, what is the benefit to be gained, for the acquisition of which it is proposed to sever a great public road. It is said, that the trade of the Schuylkill is daily becoming more and more important, and that in a short time both shores of the river will be required for its introduction and use. In this, to a certain extent, your committee concur, but they do not admit, that, at any time, such extensive shores will be lined with vessels with masts, or that such extensive shores are necessary to the accommodation of such vessels. The whole extent of both shores, from the upper bridge to the southern boundary of the city, is about seventeen thousand feet; more than thrice as great as the whole shipping front of the city of Philadelphia on the Delaware. Now it cannot be seriously said, that the shores of the Schuylkill will be in greater requisition, than the front of Philadelphia, in its greatest prosperity. It surely will be admitted, that the shores of the Schuylkill, below High street, seven thousand feet in extent, will be adequate to the accommodation of all vessels with masts, that can ascend the Schuylkill for its trade, when it is recollected, that the front for all the trade of the city on the Delaware is but five thousand three hundred and eighteen feet.

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Yet, one would suppose, from what is said on the subject, that, unless the Legislature break up the great avenue to the city, or in other words, unless vessels with masts pass above the bridge, the trade of the Schuylkill will be checked; but nothing is more visionary than such an apprehension; the trade of the Schuylkill does not rest upon so slender a basis; its greatness cannot be abridged or enlarged by the diminution or addition of wharves; the trade is great, because the Schuylkill is the lap, into which canals pour the agricultural and mineral wealth of the interior of this great state; that wealth will be poured out, to the benefit of the state and its metropolis, if a wharf should not exist above High street. It is true, it would, in a limited degree, be useful, if vessels with masts could proceed above High street, but the public benefit of such a state of things is utterly unequal to the mischief that would result from the means proposed to effect it; it does not follow, that because vessels with masts shall not ascend above High street, the produce of the Schuylkill will have no market; it does not follow, if such vessels shall not ascend, that improvement, trade, and population, on the Schuylkill north of High street, will not exist; all those evidences of public prosperity are not dependent upon such a contingency, they exist where a sail is never seen, nor an anchor weighed. So that, as to the public, no fears can exist, and thus we reach the only inconvenience that really can be apprehended; namely, that *the owners of lots above the bridge will not at once realize rents as high as those rents would be, if vessels with masts could lie at their wharves.* We admit that this is an inconvenience, but we have suggested that it was one, which, on the purchase, must have been foreseen; and we will add, that this state of things is not peculiar; there is no new road made, or work erected, which does not change the relative state of some portion of our citizens; it is not practicable to put all persons or places upon an equality.

That your committee take an extended, not a limited, or local view of this question, must be obvious, from the fact, that they have not yet spoken of the interest which the city has in the prosperity of the Schuylkill margin, above High street. The city of Philadelphia has a front, from High to Vine street, of two thousand one hundred and fifty feet; it is her interest, that improvement, trade, and population, shall spread along that margin. It will not be believed, that your committee heedlessly overlook these considerations, or that they are not anxious for the welfare of their constituents. They are fully aware of the stake which the city has, but they deem the deprivation of access, by vessels with masts, as an inconvenience that is trivial,

when contrasted with the consequences that would result from the proposed canal. The property above the bridge must, from necessity, advance in value and usefulness; it needs no stimulant; it constitutes a valuable part of the basin into which vast agricultural and mineral wealth is daily poured. Time, not remote, will bring it into activity; but to hasten the arrival of that time, your committee trust, that the Legislature will not jeopardize greater interests elsewhere.

Your committee, therefore, report, as the unanimous opinion of the undersigned, that the interference of the Select and Common Councils, on the question herein considered, is necessary. They believe that the public advantage anticipated by its friends, would not be realized from the passage of the bill, and that the private inconvenience foreboded to individuals from its rejection, are in a great measure imaginary: such is the great and growing prosperity of the state and of its commercial metropolis, that every part of that metropolis must advance in improvement, value, and ornament.

Under this impression, your committee respectfully submit the following resolution:

Resolved, by the Select and Common Councils of the city of Philadelphia, that the Senators and Representatives of the city of Philadelphia, in the Legislature of Pennsylvania, be requested to use all proper means to prevent the passage of the bill No. 117, on the files of the House of Representatives, entitled "An act to authorize the Governor to incorporate a company to make a canal navigation round the western abutment of the Permanent Bridge over the river Schuylkill, at the city of Philadelphia."

W. J. DUANE,
CHARLES MASSEY,
CHARLES JOHNSON,
ISAAC WAINWRIGHT,
LEWIS RYAN.

February 24th, 1831.

No. 4.

The difficulties thrown in the way of the passage over a great public highway, by a cut or canal like the present, are well exemplified by the following reported case, which occurred in the city of London, and is to be found in 3 Carrington & Paine's Reports, page 544.

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Adjourned Sittings at Westminster, after Michaelmas Term, 1828.

WIGGINS and Another, *v.* BODDINGTON, Esq.—p. 544.

A Dock Company having a swing bridge on a public highway are bound, in the passing of vessels, to use all reasonable means (both as to the number of men employed and the number of ships passed at a time) to prevent unnecessary delay; and if they do not do all which can be expected of reasonable men, and any one is obstructed in consequence, such obstruction will make them liable in damages for the injury sustained.

The *first* count of the declaration stated in substance, that the plaintiffs, by their servants, were driving carts, laden with sand, along a certain public highway called Wapping High Street, leading to St. Catharine's Docks, and that the London Dock Company, on the 1st of November, 1827, and on other days between that time and the 31st of March, 1828, obstructed and straitened the street, by keeping open a certain swing bridge during unreasonable spaces of time.

There was another count for general obstruction of the way, and it was alleged that the plaintiffs (to enable them to perform a contract into which they had entered) had been obliged, on account of the obstruction, to take another wharf, and provide more carts than they would otherwise have required. Plea—Not Guilty.

The plaintiffs were wharfingers and carmen, who had contracted to carry bricks and sand from their wharf to St. Catharine's Docks, and in their way there had to pass over a swing bridge at the London Docks, called the Navigation Bridge; and the complaint in the cause was, that their carts, which were in number ten, and went backwards and forwards twelve times a-day, were so delayed in their passage by the keeping open, for unreasonable spaces of time, of the swing bridge, for the letting in and out of ships, that they were obliged, after a time, to provide two additional carts, and also to obtain another wharf in a different situation.

For the plaintiffs, several of their carmen were called, who spoke to being detained sometimes a quarter of an hour, sometimes twenty minutes, and on one occasion, half an hour; and

they stated that they had seen two ships go in and one come out without the bridge being closed. They also said that there was another bridge, called the Hermitage Bridge, on the same line, but that it was not used for the passage of ships. One witness mentioned an instance in which, after the bridge had been open for twenty-five minutes, only light carts were allowed to go over, and as he was proceeding with a loaded cart to make the attempt, the bridge was forced against the horse and hurt it. This witness also said, that the dock-men used to go with the ships down to the river, before they attended to the shutting of the bridge, in consequence of which the carmen were often obliged to shut it themselves. On their cross-examination, these witnesses were not able to give dates, or to speak either to the state of the weather or the tide at the periods to which they alluded.

The dock-master of St. Catharine's Dock stated, that the London Dock Company had generally but one set of men to attend to the vessels passing the bridge, though, on an emergency, they employed an additional number. He however said, that, during the time he had observed, there was no unnecessary delay, and that much depended upon the state of the weather. He considered five minutes as the average time in good weather for passing a vessel.

The bridge-master of the West India Docks stated, that they, at their dock, employed two sets of men, fourteen to attend to the vessels and eight to attend to the bridge, and that twenty minutes was the longest time ever occupied in passing a vessel. He admitted that they had ships of greater burthen than the London Docks, but said that they employed all their men, whatever the size of the vessel; and added, that it was not their practice to pass more than one vessel without closing the bridge. No complaint was made to the London Dock Company, of which the defendant was the treasurer, till the month of February, 1828.

Bosanquet, Serjt., for the defendant. The company was established for the express purpose of improving the navigation of the port of London, and, among other things taken into consideration, was the state of the ways, and among other ways, this of Wapping High Street. The Legislature thought, notwithstanding the inconvenience to the proprietors of wharfs, that there would be an obstruction. The bridge is stated on the record to have been erected in pursuance of the acts of Parliaments. There is no doubt that this company are bound to discharge their duty with a due regard to the traffic of the public, but their primary object is, to see that ships are not delayed. They

are not to turn back any vessels presenting themselves to go in or out. There are only certain times at which vessels can be docked, and every advantage is to be taken of those times, to let in as many ships as possible. Much also depends upon the state of the tide. If a vessel is delayed, and bilged in consequence, an action will lie against the Dock Company, and the same if it falls back and injures another. The delay of a cart for half an hour cannot be compared with the demurrage of a ship for a tide. The docks have been open ever since 1805. These plaintiffs were only there for a temporary purpose, and the business of the company has been conducted in the usual way; and the complaint is, that they have not altered their mode, and increased their number of men, on account of this temporary purpose. There is no proof of any obstruction in March, about which time the notice was given. The plaintiffs ought to have been prepared with evidence to show what the state of the weather was, for their own witness has proved that all depends upon it. They have not specified the time, so as to enable us to meet their evidence. It appears, that on the occasion most particularly relied on, the light carts were allowed to go over, as they could pass quickly, and the heavy ones were only prevented, because they would have occasioned delay, which, as a ship was coming, would have been very serious.

On the part of the defendant, the dock-master of the London Docks was called, (having been released after objection on the part of the plaintiff,) and stated, that their number of men was ten, and that they only passed more than one vessel at a time, when, from the state of the tide, they would not otherwise be able to get them out in time. In answer to questions from his Lordship, the witness said, that they have no men whose particular duty it was to attend to the swinging of the bridge, and admitted, that if they had, the public might get over more quickly. The surveyor of the pavements at Wapping was also called, and said, that it might make about three minutes difference if there were an additional number of men. A tradesman, who lived near the bridge, said, that he thought it was not kept open unnecessarily. He had complained of the stoppage as an inconvenience, but he did not consider it to have arisen from any want of diligence.

Russell, Serjt., in reply.—It is said, on the part of the defendant, that it is a question between the ships and the carts, as to which are to be duly attended to; but I contend, that the Dock Company may act rightly as to both. There was an express clause in the 39 & 40 Geo. 3, c. 47, which required that they should make two bridges. [*Bosanquet*, Serjt.—That clause has

been since repealed.] The company contrived to get it repealed afterwards, and they must have done that by persuading the Legislature that they would so use the one bridge, as not to inconvenience the public. I contend, that the ships are not to be the primary object of the company's attention. The land traffic has much increased lately. My proposition is, that there has been *unnecessary* delay, and that part of my case has not been answered; because there are not, in the winter, any men to attend peculiarly to the bridge. It is said that the time is short during which vessels can come in and out; but that is a reason why a double set of men should be kept, and the most thus made of the time. The liability of the company to an action for demurrage is another reason. It seems, that since March, (when our notice was given) they have not passed three ships at a time, as they did before, and this shews that they have found that other docks manage better, and have discovered that which is the legal course for them. At the West India Docks they never pass two ships without shutting the bridge, if carts are waiting. They attend to the interests of both parties, and why should not the London Dock Company do the same? The dock-master, in his evidence, admitted that there are many instances in which the men go as far as the river before they close the bridge. Is this the way in which the public are to be treated, with many carriages waiting? He admits, that if they had more men, people might pass sooner. This is the whole of the case:—this is what I rely on. They ought to have another set of men for the bridge; and in not having them, there has been culpable negligence; and for this the plaintiffs are entitled to recover.

Best, C. J. [to the jury.]—In order to support this action, the plaintiffs must shew that the bridge was kept open longer than was necessary for the purpose for which it was made. If they have done that, they are entitled to a verdict. I should have liked the plaintiffs' case better, if complaint had been made earlier to the Dock Company. I should have liked it better also if the plaintiffs had fixed, by evidence, on some specific day, that the state of the weather might have been considered. The vagueness of the plaintiffs' evidence, has prevented the defendant from meeting the case as he otherwise might. The plaintiffs have proved that their business has been very much injured. The defendant's witnesses also admit that they have been interrupted, but they add, that they do not consider the delay as unnecessary. I agree with the observation of the defendant's counsel, that the Dock Company is extremely beneficial to the public; if not, the Legislature would not have suffered the interruption of the public highway. I cannot better put

you in possession of the principle on which you are to act, than by referring you to the acts of Parliament, which originally provided that there should be two bridges, so that when one was shut the other might be open. It appears, that afterwards this was considered not to be an advantage to the public, and therefore the provision was repealed; but under what circumstances does not appear. What arguments were addressed to the Legislature to induce them to repeal it, we do not know; they might have been that both could not be used well, and that the one should be so managed as not to inconvenience the public. The question is, whether the defendants have done all that they ought to do. It seems that, as long as the dock-master of St. Catharine's had an opportunity of observing, there was no unnecessary delay. If five minutes is the time for carrying a ship through, then it is the duty of the London Dock Company to provide a sufficient number of men to do it in that time. The witness from the West India Dock Company says, that the delay of twenty minutes occurs about once a-week. It is said that the West India Dock ships are generally larger than those of the London; but it seems that they have twenty-two men in attendance, both for large and small. If that is necessary for the West India Dock Company, then it is for you to say whether it is not necessary for the London Dock Company also. One of the witnesses says, that an increase in the number of men would make about three minutes difference. This appears to be a very small space of time, but it is for you to say whether, if occurring to several ships, it might not be a convenience to the public. The dock-master himself says, that if he had more men there would be a saving of time. It is for you to decide whether the delay which has occurred has been unnecessary. Several most respectable witnesses have said, that in their opinion there was no unnecessary delay; but on the other hand it has been proved that the plaintiffs have sustained much inconvenience. It is for the Company to avail themselves of all reasonable means to enable them to accomplish their duty and perform their contract with the public; and if they have not done so, and delay has been thereby occasioned to the plaintiffs, it is such a delay as will sustain the present action. If the Dock Company have done all that could be expected of reasonable men, availing themselves of such means as they ought, then the defendant will be entitled to your verdict; but if they have not, then you will find for the plaintiffs.

Verdict for the plaintiffs—Damages, *5l.*

If such a delay occurred at the Market-street Bridge would not the access to it be virtually destroyed?

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